UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
29th meeting
held on
Friday, 1 November 1996
at 10 a.m.
New York

SUMMARY RECORD OF THE 29th MEETING

Chairman:	Mr. ESCOVAR-SALOM	(Venezuela)
later:	Ms. WONG (Vice-Chairman)	(New Zealand)
later:	Mr. ESCOVAR-SALOM (Chairman)	(Venezuela)

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ORGANIZATION OF WORK

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Distr. GENERAL
A/C.6/51/SR.29
3 June 1997

ORIGINAL: ENGLISH

96-81785 (E)

The meeting was called to order at 10.05 a.m.

AGENDA ITEM 147: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (continued) (A/49/10 and A/51/22, vols. I and II)

1. Mr. dos SANTOS (Mozambique) said that his delegation attached paramount importance to the urgent establishment of an international criminal court. While amending the Charter of the United Nations for that purpose would be ideal, it would also be a complex and time-consuming process. His delegation therefore favoured establishing the court by means of a multilateral treaty, which would also provide the court with the necessary independence and authority. The court should, however, be associated with the United Nations with a view to ensuring its universality, to which end it should have a balanced and diverse composition. Judges should therefore be elected on the basis of geographical representation.

2. The jurisdiction of the court should be limited to the most serious crimes of concern to the international community in order to avoid trivializing the role of the court and interfering with the jurisdiction of national courts. Accordingly, the crimes within its jurisdiction should be defined both clearly and accurately, with due regard for the principle of legality. In that connection, the draft Code of Crimes against the Peace and Security of Mankind could be used to advantage, although he did not exclude the possibility of adopting definitions of crimes contained in widely accepted conventions. The key issue of acceptance of the court's jurisdiction by States should be considered further in the light of the principle of complementarity, while the issue of cooperation between States and the court should be clearly defined.

3. There was an urgent need to continue seeking a broad consensus on some of the issues raised in the report of the Preparatory Committee on the Establishment of an International Criminal Court (A/51/22, vol. I). His delegation therefore fully concurred with the conclusions and recommendations contained in paragraphs 366 to 370 of that report.

4. Ms. ŠKRK (Slovenia) said that, as an associate State of the European Union, Slovenia fully supported the statement made by the representative of Ireland on behalf of the Union.

5. A permanent international criminal court should be established on the basis of a statute as its constituent treaty. The court should have its own legal personality and should be linked to, and possibly financed by, the United Nations by means of a legal instrument. However, the court must be an independent rather than a United Nations organ. It should complement national criminal jurisdictions only when they were unable to provide due process of law or failed to conduct a fair trial of the accused.

6. With regard to the ratione materiae jurisdiction of the court, even if it was decided that only the category of gravest crimes should fall within the court's jurisdiction, that category should include offences against United Nations and associated personnel. The list of major crimes contained in article 20 of the draft statute would have to be supplemented in the

consolidated text, in particular with respect to war crimes and crimes against humanity, while the crimes of genocide and aggression required some further consideration. The crime of genocide as defined in the 1948 Genocide Convention had been proclaimed a crime under customary international law and a norm jus cogens by the International Court of Justice, and therefore did not need to be redefined. The crime of aggression should certainly fall within the court's purview, even though it had not been legally defined. The matter might be taken up in connection with the consideration of the draft Code of Crimes, which must itself be carefully examined in order to avoid any conflict with the draft statute.

7. War crimes constituting breaches of Protocol I Additional to the Geneva Conventions of 1949 and mass atrocities and other acts prohibited by Additional Protocol II should be included in the statute, as in the cases of the tribunals for the former Yugoslavia and Rwanda respectively. Furthermore, the link between crimes against humanity and the existence of an armed conflict could be set aside for the purposes of the court's jurisdiction. It must be made absolutely clear which crimes fell within the court's jurisdiction, even though the emergence of new crimes must not be ruled out a priori.

8. The mechanism for triggering the court's jurisdiction must be clearly defined, and there must be no uncertainty about the notion of its inherent jurisdiction. The political issue of whether States parties should automatically accept the court's jurisdiction over core crimes or whether an "opting-in" system should be adopted required further consideration. However, the right to lodge a complaint should be accorded to States and to the prosecutor as an independent agent. Since Slovenia believed that the court must be independent, her delegation had some doubts about the position taken in the draft statute that, in the case of a crime of aggression, no complaint could be made unless the fact of the aggression had been determined by the Security Council. Of course, that did not mean that the Council would not be entitled to submit cases to the court. Since its Constitution prohibited capital punishment, Slovenia would be unable to accept the inclusion of that penalty in the statute.

9. The time was ripe for the establishment of an international criminal court, and the General Assembly should heed the voice of public opinion in that respect. It ought to be possible for the Preparatory Committee to complete its work by April 1998 and for a diplomatic conference to be convened in June of that year.

10. Mr. CHAVES (Kyrgyzstan) said that his Government enthusiastically endorsed the idea of an international criminal court as a significant and meaningful contribution to the maintenance of international peace and security and a means of bringing to justice those responsible for international crimes. It would also act as a deterrent to the commission of such crimes. To be fully effective, however, it was imperative that the court should have the unreserved support of the entire international community.

11. The court should complement national courts and its jurisdiction should be limited to crimes that were international in nature and did not fall within national jurisdictions. The court should also be fully independent, while

remaining closely linked to the United Nations. The crime of genocide, war crimes and crimes against humanity should fall within the court's jurisdiction, but it was possible that the crime of aggression could be added. He acknowledged, however, the difficulties entailed in defining that crime; the principle of nullum crimen sine lege should be strictly applied to the court.

12. The statute of the court should encompass the provisions of general criminal law and provide for procedures, due process and protection of the accused, victims and witnesses. Lastly, it should be clearly established that crimes against humanity which were not committed in connection with armed conflict were none the less subject to the jurisdiction of the court.

13. Ms. VARGAS de LOSADA (Colombia) said that the collective deliberations on the draft statute had shown which aspects of the Commission's proposal enjoyed support, which gave rise to difficulties and which must be improved, as well as additions that should be incorporated. Despite the difficulties that some developing countries had had in expressing their views on the topic, a consensus seemed to be emerging that a permanent, universally accepted and independent court should be established by means of an international treaty, that the court should have jurisdiction over the most serious crimes, and that the principles of criminal law and procedural aspects must be incorporated in the statute. However, as the work of the Preparatory Committee showed, differences persisted on a number of vital topics.

14. Her delegation attached greatest importance to the relationship of the court to the United Nations, a relationship which should preserve the court's complete independence, especially from decisions of a political organ. Its jurisdiction should cover only the most serious crimes, which must be clearly defined. The way in which the principle of complementarity and acceptance of the court's jurisdiction over crimes other than genocide were dealt with would largely determine the degree of acceptance of the statute by States. It was never the function of the court to replace national courts, and the cases in which it could exercise its jurisdiction must be clearly spelt out. Complementarity must therefore be properly reflected not only in the preamble but throughout the statute. Only the States parties should have the capacity to trigger the court's jurisdiction in a specific case.

15. The general principles of criminal and procedural law must be incorporated in the statute in order to guarantee full respect for due process. The question of States' cooperation with the court should also be clearly regulated in the statute; the conclusion of individual agreements between the court and States parties was not the most appropriate way of tackling the issue, which was one of the utmost importance, since the court's effectiveness would depend largely on such cooperation.

16. Her delegation supported in principle the Preparatory Committee's recommendation concerning the scheduling of its future meetings, but the viability of a diplomatic conference would ultimately depend on progress in the negotiations, which had not yet in fact begun.

17. Mr. AYEWAH (Nigeria) said that the political will to create an international court now existed. Emphasis should therefore be placed on

resolving outstanding issues and adopting a set of principles that would enable the largest possible number of States to ratify the treaty establishing the court. Nigeria was fully committed to the idea of a permanent court, and the progress made in the Preparatory Committee offered a ray of hope that that idea would be realized. The Preparatory Committee must also bear in mind the need to produce a treaty which States would ratify.

18. The court should be independent and established by a multilateral treaty. It should have jurisdiction over only the most serious crimes, which must be clearly defined in accordance with the principle of nullum crimen sine lege. Its jurisdiction should include the crime of genocide as defined in the Genocide Convention. With a view to ending impunity, the crime of aggression should also be included, together with serious violations of the laws and customs applicable to armed conflict and crimes against humanity. However, his delegation still had doubts about including treaty-based crimes at the present stage, although it believed that the draft Code of Crimes against the Peace and Security of Mankind should be linked to the court.

19. There was no merit in granting the court inherent jurisdiction over any crime, because that would be incompatible with the principle of complementarity and create jurisdictional difficulties for national courts. The principle of complementarity must be retained in the statute, and the court should hear only cases in which there was no prospect of the accused being tried in a national court. The statute must not reflect a balance in favour of the court, and the Nigerian delegation was not convinced of exceptions through the principles of complementarity or exclusive and concurrent jurisdictions. Since the type of justice dispensed by the court would be crucial to its success, procedural issues, such as the rights of the accused, must be dealt with in the statute.

20. Notwithstanding its mandate, the Preparatory Committee had not yet begun to negotiate texts. It was therefore too early to set the date for a diplomatic conference, even though in principle one could be held in 1998 if a draft consolidated text was adopted in time.

21. Ms. Wong (New Zealand), Vice-Chairman, took the Chair.

22. Mr. BIGGAR (Ireland) said that Ireland fully endorsed the statement on the item made on behalf of the European Union but wished to make some additional comments.

23. The comprehensive application of the principle of respect for the rule of law had long been an aspiration of mankind, although one still far from achievement. Serious individual crimes still occurred and were not dealt with by national jurisdictions, hence the need for an international criminal jurisdiction that would reinforce respect for the rule of law.

24. Despite advances in international law on the protection of human rights, there had been little progress on recognition of individual duties and responsibilities. The only significant developments had been the 1949 Geneva Conventions and the 1977 Protocols until the establishment of the ad hoc tribunals for the former Yugoslavia and Rwanda. Ireland had fully supported that move, although it had merely served to emphasize the need for a permanent

system for recognizing and enforcing individual duties and responsibilities. The current work was a response to that need, and he urged all delegations to respond to the conclusions contained in the Preparatory Committee's report by adopting a resolution on the further work of that body and deciding to hold a diplomatic conference in 1998.

25. The future court should not be an organ of the United Nations but should be established by a treaty. The link with the United Nations should be formalized in an agreement which would provide, inter alia, for the financing of the court by the Organization. However, the court's independence must be guaranteed.

26. The statute must include provisions for fair trial and protection of the rights of the accused, but the seriousness of the crimes heard by the court must be matched by commensurately heavy penalties. The court must therefore operate in a manner which fully respected internationally agreed human rights standards.

27. Article 39 of the Charter of the United Nations entrusted to the Security Council the responsibility of determining the existence of an act of aggression. As the court would be concerned with the responsibility of an individual for a crime of aggression, it must therefore rely on a finding by the Council. The statute should recognize the distinction between the two roles and render them complementary rather than contradictory. The Council must be able to refer cases to the court so that the court would not have to await referral by a State, but the Council should not have any control over the criminal proceedings. Nor should it have the power to veto any decision of the court or to terminate any proceedings before it.

28. The time was right to establish the court and the current momentum must not be lost. There were no insuperable difficulties or any reasons why the preparatory work could not be completed by early 1998 and a diplomatic conference held in June of that year.

29. Mrs. MEKHEMAR (Egypt) said that recent bloody events and flagrant violations of international humanitarian law affirmed the urgent need for the establishment of an international criminal court. She was confident that the Preparatory Committee would be able to resolve problems relating to the definition of aggression and to the issue of individual responsibility for aggression, which should not, in any case, preclude its inclusion among the crimes falling within the jurisdiction of the court.

30. The basic principles of international law, such as the principle of legality, should also be an integral part of the eventual statute of the court. The crimes contained in the statute should be clearly defined, in which connection the definitions contained in the draft Code of Crimes against the Peace and Security of Mankind and various other international instruments could serve as guidelines. The prescribed penalties should also be commensurate with the crimes committed. As for the basic principle of complementarity, the draft statute should clearly state that national courts had inherent jurisdiction, except in instances where they were unable to discharge their function, in which case jurisdiction would fall to the international criminal court. The Preparatory Committee needed to give further consideration to defining the

relationship between the two jurisdictions, which she imagined would differ according to the crime.

31. Her delegation attached great importance to the question of the relationship of the Security Council to the court and strongly believed that great care should be taken to ensure that the freedom and independence of the court were maintained. The role of the Security Council should be limited to referring certain matters to the prosecutor for investigation with a view to avoiding the need for ad hoc tribunals. However, the Security Council should not act as a trigger mechanism; States parties should also be permitted to refer matters to the prosecutor.

32. She hoped that her delegation's proposal concerning the right of victims to claims compensation for the effects of crimes committed against them would be reflected in the draft statute. She also expressed her delegation's belief that the prosecutor should be independent, with the authority to investigate and trigger a case, as well as its support for the proposal to establish a special chamber of the court to which the prosecutor could refer his recommendations for conviction.

33. Lastly, she believed that the Preparatory Committee had been allocated sufficient time to settle all pending issues before April 1998. In that connection, her delegation would prefer to see the Preparatory Committee's work divided among three two-week sessions and believed that such work should receive priority in the scheduling of the activities of the Sixth Committee. Her delegation would welcome the establishment of a fund to help States requiring financial assistance participate in the work of the Preparatory Committee and was convinced that the convening of the proposed diplomatic conference in 1998 was both inevitable and essential.

34. Mr. NEGA (Ethiopia) said that the deliberations of the Preparatory Committee reflected widespread support for the early establishment of an international criminal court. Ethiopia was itself endeavouring to deal with the legacies of the past and ensure that those responsible for violating the human rights of its people were brought to justice. Against that background it viewed the establishment of the court as an important complement to national jurisdiction in preventing and punishing breaches of international humanitarian law.

35. There were a number of issues which must be resolved in the Preparatory Committee before a diplomatic conference could be convened. His delegation believed that the court should be complementary to national jurisdiction and that matters relating to the principle of non bis in idem should be dealt with clearly in the statute in order to ensure acceptance of the court's jurisdiction by a majority of States. The court could perform an important function when national courts could not discharge their responsibilities because of a collapse of the constitutional order or for reasons beyond their control. However, the establishment of the court must not undermine the prerogative of States to investigate and prosecute criminal cases under their jurisdiction.

36. The categories of crimes constituting the ratione materiae jurisdiction of the court must be clearly defined. Its jurisdiction should focus mainly on the

most serious crimes as defined in the relevant international legal instruments. In particular, the crime of terrorism could be brought within the court's jurisdiction.

37. There should be a close link between the court and the United Nations in order to ensure the universality and wide use of the court. However, the nature of the relationship, in particular with the Security Council and the General Assembly, must be clearly spelt out and the court's independence guaranteed. Furthermore, the roles of those two organs in relation to the court should be properly balanced.

38. The General Assembly should now renew the Preparatory Committee's mandate on the understanding that its work would be completed in 1998 and followed by a diplomatic conference. It was essential to secure wider participation by States in the work of the Preparatory Committee and in the final negotiations at the diplomatic conference. It was therefore important to provide the necessary support for participation by developing countries, in particular the least developed ones.

39. Mr. BERÁNEK (Czech Republic) said that his delegation aligned itself with the statement made on the item by the representative of Ireland on behalf of the European Union, and that his present statement would offer some additional comments on particular issues. His delegation welcomed the progress made by the Preparatory Committee on alternative draft definitions of the three core crimes: war crimes, crimes against humanity and genocide. However, the draft Code of Crimes against the Peace and Security of Mankind elaborated by the International Law Commission provided another possible option for consideration in that regard.

40. A properly functioning system was conceivable only if the court's jurisdiction was limited to the most serious crimes of concern to the international community as a whole. Accordingly, if the court was not to be overloaded, its jurisdiction should be confined to genocide, war crimes, including crimes under The Hague Convention and the Geneva Conventions, and crimes against humanity. In addition, his delegation had repeatedly supported inclusion of the crime of aggression within the court's jurisdiction during the sessions of the Ad Hoc and Preparatory Committees, and believed that that sensitive issue should be reconsidered in the light of the draft Code of Crimes.

41. The trigger mechanism proposed in the draft statute was too complicated: the many cumulative conditions set out in article 21 would complicate the functioning of the court. The principle of inherent jurisdiction should be applicable to all core crimes.

42. His delegation did not share the view of some delegations that the position of the Security Council, as envisaged in article 23, would undermine the court's judicial independence and integrity. Article 23 was fully consistent with the responsibilities of the Security Council under the Charter of the United Nations, and the draft statute conferred no additional authority on it. The possibility for the Security Council to trigger jurisdiction might become particularly pertinent if the court's jurisdiction was finally narrowed down to three or four core crimes.

43. His delegation fully supported the Preparatory Committee's conclusion that it should finalize its work in April 1998, and that it should work mainly in working groups. The holding of a conference in 1998 was indeed a fully realistic proposal, and at its current session the General Assembly should adopt a resolution setting 1998 as a firm date for the convening of the conference and giving the Preparatory Committee the mandate to complete its work by April of that year. June 1998, as proposed by Italy in its generous offer, would be the most appropriate month for the opening of the conference.

44. Mr. KATEKA (United Republic of Tanzania) said that the establishment of an international criminal court should obviate the need for ad hoc tribunals of the sort created to try international crimes in Rwanda and the former Yugoslavia. The Preparatory Committee must coordinate and harmonize the draft Code of Crimes against the Peace and Security of Mankind and the draft statute of the court and, in particular, ensure consistency in the definition of crimes. The court's jurisdiction should be confined to the most serious crimes, which should be precisely defined in the statute. His delegation noted that there was widespread support for the inclusion of genocide, war crimes and crimes against humanity. However, a situation of armed conflict was not a prerequisite for a crime against humanity: recent experience had shown that such crimes occurred both during armed conflicts and in peacetime. As for crimes of aggression, the draft article requiring that the Security Council must first determine that a State had committed an act of aggression before a complaint could be brought under the statute needed further consideration, as it could result in situations of impunity when the Security Council failed to act.

45. With regard to treaty-based crimes, his delegation believed that the annex to article 20 should be revised to include serious crimes such as illicit drug trafficking, which was covered by existing conventions. Mercenaries, too, had committed serious crimes against peace and security, especially in Africa, and his delegation would thus support the inclusion in the annex of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, once that convention came into force.

46. With regard to the trigger mechanism, his delegation supported the view that the court did not require specific consent in order to have jurisdiction. By becoming a party to the statute, a State should be presumed to have accepted the court's jurisdiction. The court's inherent jurisdiction did not undermine the complementarity principle: while the court should not usurp the role of national courts, its residual power must be recognized.

47. In the light of current global realities, an amendment of the Charter of the United Nations was not feasible; an independent and permanent court should therefore be established by means of a multilateral treaty. The court should be funded by States parties, with initial support from the United Nations regular budget, but dependence on voluntary contributions would undermine its sustainability. It should also have a special relationship with the Organization that would be spelt out in an agreement.

48. His delegation shared the Preparatory Committee's optimistic view that it would be feasible to hold a diplomatic conference in 1998, and commended Italy for its offer to host the conference in June of that year. The Preparatory

Committee would need to meet for up to nine weeks in order to complete its preparatory work. That process deserved the broadest possible participation, and his delegation noted that participation by developing countries had been notably unrepresentative. It thus joined other delegations in calling for the establishment of a special fund to assist participation by the least developed countries.

49. Ms. STEAINS (Australia) noted the importance of universal acceptance of the court and welcomed the fact that countries from a broad geographical base had been represented at meetings of the Preparatory Committee. She urged countries that had not yet participated in the negotiations to become actively involved therein. Australia's assessment of the outcome of the Preparatory Committee's work was categorically positive: the working groups had made significant progress towards the goal of preparing a consolidated text of a statute, and the fact that all their meetings had been convened outside the plenary sessions had enabled even the smallest of delegations to participate fully in all aspects of the Committee's work, thereby exemplifying the universality of the process.

50. The court should be an independent body closely linked to the United Nations and funded from its regular budget. Several precedents existed for regular-budget funding of bodies established by multilateral treaties. Moreover, the fact that the crimes under the court's jurisdiction were of universal concern, and not just the concern of States parties to the statute, would certainly justify such funding, as would the proposed linkage with the Security Council.

51. Her delegation welcomed the consensus that had emerged in favour of the court's jurisdiction being limited to only the most serious crimes of international concern. The court must have jurisdiction over events arising out of conflicts both of an international and of an internal nature, and no link need exist between the commission of crimes against humanity and situations of armed conflict. The court should have inherent jurisdiction in respect of genocide, and further consideration should be given to extending that inherent jurisdiction, at a minimum, to crimes against humanity.

52. Regarding the principle of complementarity, her delegation supported the adoption of safeguards that would give appropriate protection to the sovereignty of States parties. The court's jurisdiction should not take precedence over national jurisdictions where they were ready and able to deal effectively with alleged crimes. The court must, however, be able to determine that a national jurisdiction was indeed ready and able to investigate and/or prosecute alleged crimes or whether it had already done so. If it lacked that power, sham investigations or proceedings at the national level would go unchallenged.

53. The power of the Security Council to refer matters to the court was one of the court's fundamental jurisdictional foundations, for one of the key purposes of the court would be to obviate the need for the Council to set up ad hoc tribunals. At the same time, the relationship between the two bodies must be such as to ensure that the court was independent and free from the political influence of other United Nations organs.

54. If momentum was not to be lost, it was now necessary to move towards convening a diplomatic conference. Further open-ended preparatory meetings would make it especially difficult for smaller States - and even countries such as Australia - to participate actively in the future negotiations, and would thus merely serve to undermine the universality of the court. Her delegation accepted that further preparatory work was necessary on several major issues, and endorsed the Preparatory Committee's recommendation with respect to the future work plan, including the allocation of six weeks' meeting time in 1997. As certain issues could probably be resolved only at the diplomatic conference, that conference should be convened in 1998.

55. Too many atrocities had been left unaccounted for since the Nürnberg and Tokyo Tribunals. The international community owed it to the millions of people who had suffered to prove, 50 years on, that it was committed to seeing justice done and deterring potential future perpetrators of international crimes by seizing the present opportunity to establish an international criminal court.

56. Mr. Escovar-Salom (Venezuela) resumed the Chair.

57. Mr. WELBERTS (Germany) said that his statement would complement the one already made on the item by the representative of Ireland on behalf of the European Union. Germany endorsed the conclusions contained in the report of the Preparatory Committee (A/51/22) and was glad to note that the proposal to establish an international criminal court, which had met with some scepticism at the outset, had gained wide support. A compromise decision on the court's statute now seemed within reach, and the proposed nine-week inter-sessional work programme should suffice to prepare the diplomatic conference. Accordingly, the General Assembly should, at its fifty-first session, fix a date for convening the conference in 1998.

58. The future convention establishing the court must be based on as broad a consensus as possible. The growing number of contributions from many delegations paved the way towards universality, a prerequisite if the court was to play a significant role. Its jurisdiction should concentrate on core crimes such as genocide, crimes against humanity, war crimes and aggression, and must be available in the absence of any effective prosecution by national authorities. States would accept the court's jurisdiction upon accession to the convention, without any requirement of case-by-case consent.

59. Regarding the trigger mechanism, his delegation considered that the court should be able to begin proceedings at the request of any State party or group of States parties to the future convention. Furthermore, its prosecutors must have the power to undertake investigations ex officio on the grounds of any information obtained. The court must observe the highest standards of due process; the prosecution must therefore act according to the principle of judicial investigation, establishing all the facts of a case, whether incriminating or exonerating for the accused.

60. As to the link between the court and the Security Council, the convention establishing the court would clearly have no effect on the Council's prerogatives under the Charter. On the other hand, the court must be independent of political power. While the Security Council might be in a

position to refer situations or cases to the court, it should not be able to control access to it. If, as Germany advocated, aggression was included as one of the core crimes of which the court might be seized, delimitation of the competences of the two bodies might require further reflection.

61. The future convention should limit itself to regulating substantive and procedural principles, and the finer procedural points should be left to the discretion of the court itself. On that understanding, there was no reason why the preparatory work should not be completed by April 1998. The Sixth Committee should therefore recommend to the General Assembly that it should reaffirm the Preparatory Committee's mandate and convene a diplomatic conference in June 1998.

62. Mr. LAVALLE VALDÉS (Guatemala) said that the Preparatory Committee's efforts to prepare a convention for the establishment of an international criminal court reflected the virtually unanimous support of Member States. The enthusiastic contribution of non-governmental organizations was also to be welcomed.

63. It was important that the Preparatory Committee should produce a single consolidated text regulating all key aspects of the court's functioning prior to the conference proposed for June 1998. To date, nearly all aspects of the future institution had been considered, enabling States to define their respective positions. His delegation was concerned, however, about the difficulty of reaching consensus on the many options that had emerged. It was also concerned that the Preparatory Committee tended to give excessive attention to issues which were too specific to be dealt with in the treaty that would establish the new court. Nevertheless, despite some obvious lacunae, the draft statute prepared by the International Law Commission provided a good base.

64. Optimum coordination must be ensured between the court's constituent convention and the draft Code of Crimes against the Peace and Security of Mankind which the International Law Commission had finally adopted. Given the close relationship between the two instruments, his delegation urged the General Assembly not to take a decision with regard to the draft Code during the current session and the Preparatory Committee to take due note of the Code in its future deliberations. It was true that a great many proposals had already been submitted to the Preparatory Committee; however, as both the initial proposal for the court's statute and the draft Code had been drawn up by the International Law Commission, the Preparatory Committee should bear in mind the many provisions of the Code which could fill lacunae in the draft statute.

65. His delegation supported the proposal to hold a plenipotentiary conference in June 1998 and expressed its appreciation to the Government of Italy for the generous offer to host the event.

66. Mr. ZAIMOV (Bulgaria) joined in welcoming the progress made by the Preparatory Committee during the year in reviewing the major substantive and administrative issues relating to the establishment of an international criminal court. Nevertheless, the large number of proposals from delegations reflected in the Preparatory Committee's report showed that much work had yet to be done to prepare a widely acceptable consolidated text of a convention establishing

the court before a diplomatic conference could be convened. His delegation supported the conclusions and recommendations contained in the report and believed that the Preparatory Committee should be allowed to complete its task as expeditiously as possible. It was essential to maintain the momentum generated for the establishment of what would become the core of an impartial international criminal justice system.

67. Bulgaria was firmly committed to the establishment of a permanent international criminal court able to ensure stability, uniformity and consistency in the application of international criminal law. The court should be established by a multilateral treaty to ensure a solid legal basis for the exercise of its jurisdiction and to foster universal acceptance. While the court would be an independent organ, it should operate in close relationship with the United Nations on the basis of an agreement between the two institutions. Such a relationship would facilitate wider acceptance of the court's jurisdiction by States and would help it become an effective judicial institution acting on a global scale.

68. The jurisdiction of the court should be limited to a hard core of the most serious crimes, as defined under general international law, that were of concern to the international community as a whole. In that regard, finalization of the draft Code of Crimes against the Peace and Security of Mankind might be of particular importance for the future work of the Preparatory Committee. The crimes to be included under the court's jurisdiction should be precisely defined in the court's statute, which should also include provisions on the general principles and rules of criminal law to be applied by the court.

69. The fundamental principle of complementarity should be reflected in the provisions of the statute. The court should not be a substitute for but should complement national criminal justice systems in cases where the relevant judicial procedures might be unavailable or ineffective. The establishment of a workable and effective system of cooperation between the court and States was of crucial importance for the effectiveness of the court, and the statute should contain explicit provisions on the matter that drew on existing structures and practice in international judicial cooperation.

70. Elaboration of a statute that enjoyed universal support would not be an easy task: further discussions and negotiations were needed to achieve consensus on major substantive and administrative issues. The future work of the Preparatory Committee should therefore be focused on the universality of a permanent international judicial institution that would meet the highest standards of justice.

71. Ms. WONG (New Zealand) noted that general agreement had been reached on holding a diplomatic conference in June 1998 and expressed appreciation for the Italian Government's renewed offer to host the event. The Committee should now concentrate its efforts on ensuring that the future international criminal court was both fair and effective. To that end, delegations should drop their insistence on limiting the court's jurisdiction and its independence. Efforts to undermine the court's effectiveness were unacceptable to the wider world community.

72. Some delegations had spoken against giving the court inherent jurisdiction, as that would be contrary to the principle of complementarity. Those delegations had called for an "opt-in" mechanism to trigger the jurisdiction of the court in order to promote its wide acceptance and had also urged that the court should be able to impose the death penalty. However, her delegation could not condone a penalty which the international community had outlawed in an international instrument.

73. The rights of victims and individuals were of the utmost importance. As representatives of civil society had rightly pointed out, it was the complaints of individuals that must have standing before the prosecutor so that justice could be established for them. The ability of the prosecutor to conduct on-site investigations was crucial and did not contravene a State's sovereignty, as some delegations maintained. International law clearly established that States had an obligation to take action against perpetrators of gross violations of international humanitarian law.

74. To suggest that agreement and understanding must exist among all the parties concerned before an individual could be prosecuted was to suggest that a perpetrator could be shielded by any concerned party. That should not be allowed.

75. As to the role of the Security Council in the court's operation, the Council should be able to resort to the court instead of establishing ad hoc tribunals, but it should not serve as a filter for prosecution.

76. The only way of dealing with the issue of impunity was to establish a fair and effective court. Work should not become mired in endless procedural discussions about the differences in existing legal systems: a new procedure must be melded from within that diversity, and the court should be given flexibility in developing its own procedures.

77. Once the court was created, it would be necessary to establish a mechanism to monitor its functioning. In that connection, her delegation greatly regretted the questions that had arisen recently regarding the operation of the International Tribunal for Rwanda; that Tribunal must function fairly and effectively without any interference in its operation.

78. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that the Preparatory Committee had made significant progress towards the elaboration of a consolidated text for a convention on the establishment of an international criminal court. She welcomed in particular the contributions made to that effort by non-governmental organizations. June 1998 was a realistic date for holding a plenipotentiary conference and her delegation was confident that the General Assembly would finally adopt a resolution to that end at the current session. Her Government was grateful to the Government of Italy for its generous offer to host the event.

79. The success of the international criminal court would depend on the extent to which ideals were combined with political reality in creating a court that could gain universal acceptance without losing its effectiveness in preventing and punishing the most serious international crimes. An appropriate balance

must also be struck between including all the substantive and procedural norms necessary to ensure proper criminal procedure and the need to avoid an excessive level of detail which could impede the success of the initiative.

80. Her delegation was prepared to work towards a court which had the following main characteristics: inherent jurisdiction over only the most serious crimes of concern to the international community as a whole (including genocide, war crimes and crimes against humanity); complementarity with national courts, although not subordination to them; and independence of the Security Council.

81. On the last matter, her delegation believed that there should be close cooperation between the Security Council and the court, each with its own respective jurisdiction. The Council should be encouraged to submit matters to the court, but her delegation could not accept a court which could act only when authorized by the Security Council.

82. Ms. ZABAIDAH (Brunei Darussalam) said that her delegation supported the establishment of an international criminal court as it believed that those who had committed crimes against humanity should not remain unpunished. Although the issues involved were complex, substantial progress had been made towards preparing a single widely acceptable text for the convention establishing the court.

83. Her delegation believed that the crimes falling within the court's jurisdiction should be defined clearly and specifically; in that regard, the work of the International Law Commission on the draft Code of Crimes against the Peace and Security of Mankind could be usefully considered. The court should have jurisdiction over the crimes of genocide, crimes against humanity and war crimes. The statute of the court should also contain provisions relating to the general rules of criminal law and provisions to guarantee due process and the protection of witnesses and victims.

84. With regard to complementarity, the court should operate only in cases where national jurisdictions were unable or unwilling to guarantee justice.

85. Her delegation supported the "opt-in" mechanism which would promote wider acceptance of the court by avoiding any conceivable infringement of sovereignty. The right of the prosecutor to carry out on-site investigations should always be subject to the consent of the States involved. The court's independence and impartiality were fundamental to universal acceptance.

86. Her delegation supported the recommendations of the Preparatory Committee, including the recommendation that it should meet three or four times more to resolve pending issues by April 1998, prior to the diplomatic conference. She welcomed the generous offer of the Government of Italy to host the conference in June 1998 and noted that the establishment of such a court was long overdue.

87. Mr. ANGELESKI (The former Yugoslav Republic of Macedonia) expressed support for the statement made by the representative of Ireland on behalf of the European Union and for the establishment of an international criminal court as a permanent judicial institution closely linked to the United Nations and complementary to national systems of justice.

88. A growing number of intra-State conflicts had resulted in serious violations of international humanitarian law, revealing a lacuna in the international legal order. The establishment of ad hoc tribunals for Rwanda and the former Yugoslavia was encouraging, but a permanent international criminal court should both ensure that those responsible were brought to justice and also have a deterrent effect, thereby playing a significant role in the maintenance of international peace and security, especially in regions such as the Balkans.

89. His delegation supported the proposal to convene further meetings of the Preparatory Committee in order to complete discussions and expressed its appreciation to the Government of Italy for its generous offer to host a plenipotentiary conference in June 1998.

90. Mr. MANIANG (Sudan) said that his delegation supported the establishment of an international criminal court. It was important for all States to participate in the discussion and adoption of the draft statute of the court to ensure that it reflected cultural diversity.

91. He fully supported the view that the jurisdiction of the court should be restricted to the most serious crimes which threatened peace and security. Those crimes should be clearly defined with a view to both strengthening the role of the court and acting as a deterrent to their commission. The jurisdiction of the court should complement that of national courts in order to balance the sovereignty of States with their mutual obligations and to avoid politicization of the court, which would undermine its impartiality. Its jurisdiction should come into play where national jurisdiction was unavailable or ineffective.

92. Believing that the independence of any court was of vital importance, his delegation had great difficulty in accepting that the Security Council, which had a political role, should play any part in the work of the international criminal court. Accordingly, the draft statute of the court should not vest in the Council any powers over and above those which it enjoyed under the Charter of the United Nations. However, an agreement on administrative, procedural and financial arrangements should be concluded between the United Nations and the court. Finally, having affirmed his delegation's willingness to participate in the efforts to establish an international criminal court, he expressed the hope that, once adopted, the statute would be acceptable to all States.

93. Mr. KOFFI (Côte d'Ivoire) said that if the statute of the future court was to have the widest possible acceptance by the international community, it must recognize the principle of complementarity. Justice was an attribute of sovereignty; therefore, sovereignty should be preserved to the extent possible. Nevertheless, where national jurisdictions were non-existent or inoperative, the international community had an obligation to substitute an international jurisdiction for them.

94. The jurisdiction of the court should include the core crimes enumerated in article 20 of the draft statute. The definition of aggression should be sharpened so as to provide the future court with a solid basis for objective deliberation. Once the definition of international terrorism had been made clearer, it, too, could fall within the court's jurisdiction.

95. His delegation endorsed the inclusion in the draft statute of all the general principles so far discussed, particularly those of legality, non-retroactivity and non bis in idem. Generally speaking, his delegation believed that it would be more efficient for the Committee to address outstanding issues rather than reopen the discussion of questions that had already been settled; purely procedural matters could be left to the discretion of the judges who would be elected to the court.

96. His delegation believed that penalties should reflect the gravity of the acts concerned. They should not be dictated by a desire to appease a public thirst for revenge, but should reflect the most widely held legal concepts and norms.

97. The initiative taken by Member States to ensure broader participation by low-income developing countries in the work of the Preparatory Committee was a welcome one. Côte d'Ivoire was also grateful to the Italian Government for its generous offer to host the conference of plenipotentiaries in June 1998. While his delegation had no objection to that date, it hoped that the most serious differences of opinion would be ironed out before the convening of the conference so as to ensure the universality of the court.

98. Mr. MASUKU (Swaziland) said that his delegation welcomed the report of the Preparatory Committee and found it encouraging that the long process of negotiations appeared to be approaching its end. The Kingdom of Swaziland supported the establishment of the court as an independent and stable institution which would greatly contribute to the development of a body of international criminal law. While many issues remained to be resolved, that was not a cause for paralysis; his delegation therefore hoped that the next round of preparatory meetings would lay the groundwork for the convening of a diplomatic conference in 1998.

99. Ms. ARYSTANBEKOVA (Kazakstan) said that her delegation shared the consensus regarding the necessity of establishing the court on the basis of a multilateral treaty ratified by a large number of States. Only broad acceptance of the court's jurisdiction would ensure its universality and effectiveness, while also reducing the burden of court-related expenditures, which would have to be borne by States parties to the statute.

100. Close ties should be established between the United Nations and the court on the basis of a special agreement. Such cooperation should take into account the specific nature of the court, which was to be established as an independent international legal institution, free from political influence.

101. The court's jurisdiction should complement that of national courts and should be limited to the most serious international crimes. Taking into account the large number of crimes connected with international terrorism and illicit drug trafficking, and the fact that international cooperation had been fairly successful in combating such crimes, her delegation did not believe that they should fall within the court's jurisdiction except in isolated cases which posed a threat to international peace and security.

102. In view of the difficulties involved in defining "aggression" and establishing individual criminal responsibility for the perpetration of acts of aggression, her delegation could support the inclusion of aggression within the court's jurisdiction only if agreement could be reached on a legal definition of the term. Otherwise, it would be difficult to avoid politicization of the court's functioning.

103. As to the need to safeguard the role of the Security Council in the maintenance of international peace and security while ensuring the independence of the court, her delegation shared the view that the Council's mandate to examine situations likely to endanger international peace and security should not limit the court's mandate to judge criminal acts connected with such situations and attribute individual responsibility for them. Accordingly, her delegation would prefer to have article 23, paragraph 3, of the draft statute deleted.

104. As the independence of the judiciary was one of the fundamental principles of criminal law, her delegation, while supporting articles 10 and 11 of the statute as currently drafted, believed that the provisions of article 12, relating to the independence of the procuracy, should be strengthened.

105. Given the gravity of the crimes over which the court had jurisdiction, they should not be subject to a statute of limitations.

106. In the light of the progress achieved by the Preparatory Committee, it was reasonable to expect that work on the draft statute could be completed and a conference of plenipotentiaries held to approve the final text by 1998. Her delegation expressed appreciation to the Government of Italy for its offer to host that conference.

107. Mr. TUN (Myanmar) said that there was a growing consensus that if international criminal law was to be enforced effectively and perpetrators of the most serious international crimes brought to justice, a permanent court was necessary. His delegation shared that view and believed that the court would be most useful if it was allowed to function independently and fairly. The aim should be to establish a universally accepted institution which adhered to the highest standards of due process and fair trial.

108. His delegation supported the establishment of the court by means of a multilateral treaty. That, in turn, implied that the court's jurisdiction should be confined to the most serious international crimes; that the court did not in any way supplant or exclude jurisdiction of national courts; that the court should come into operation only in cases where national trial procedures were unavailable; and that the court's investigative, prosecutorial and judicial functions were not influenced by other political organs, including the Security Council.

109. With regard to the trigger mechanism and the role of the prosecutor, the statute should not confer on the Security Council any authority over and above that which had been assigned to it by the Charter of the United Nations. The relationship between the court and the Council should not undermine the judicial integrity of the court or the sovereign equality of States. Only States parties

to the statute having a direct interest in a particular case should be able to lodge a complaint, so as to prevent frivolous or politically motivated claims.

110. Lastly, his delegation had no objection to the Preparatory Committee's recommendation that it should meet three or four times over a period of up to nine weeks prior to the convening of the diplomatic conference. In the interest of establishing an international criminal court which enjoyed the broadest support of States, every effort should be made to ensure that all States, including small developing countries, were able to participate in the work of the Preparatory Committee.

111. Mr. JERKIĆ (Bosnia and Herzegovina) said that in the light of his country's recent history, his delegation strongly supported the establishment of a permanent international criminal court that would react promptly to major violations of international humanitarian law. The establishment of the ad hoc tribunals for the former Yugoslavia and for Rwanda constituted a milestone in the process of creating such a court by lending support to the notion that those who committed gross violations of international humanitarian law would face justice. The lessons learned by the international community through its experience with the International Tribunals should be taken into account in the debate over the creation of a permanent international criminal court, particularly the fact that, had such a court existed previously, it could have dealt with the crimes committed more promptly.

112. His delegation believed that the court should be established on the basis of an international treaty. It must be an independent institution, but should also cooperate closely with Member States in the performance of its functions. The court would need that cooperation if it was to be effective when a national criminal justice system was unavailable or unwilling to dispense justice.

113. Another of the lessons learned from the ad hoc tribunals related to the relationship between the political and judicial processes. The court should act on the assumption that legal and political processes must be separate, and there should be no undue political interference that would undermine its credibility.

114. Another important issue was the apprehension of indicted individuals. One of the major problems with the International Tribunal for the Former Yugoslavia was that the most notorious indicted individuals remained free owing to the lack of political will on the part of Member States or other authorities - legal, illegal or de facto political entities - to apprehend them. A related question, that of enforcement, was crucial to the success or failure of an international criminal court.

115. His Government wished to express its appreciation to the Netherlands, the seat of the International Tribunal for the Former Yugoslavia, for its contribution to the work of the Preparatory Committee. Bosnia and Herzegovina hoped that the work of the Preparatory Committee would culminate in the convening of an international conference in 1998, the fiftieth anniversary of the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide.

ORGANIZATION OF WORK

116. Mr. OBEIDAT (Jordan), referring to the statement made by the representative of Mexico at the close of the previous meeting, proposed that the Committee should establish a working group to consider the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter (agenda item 150).

117. It was so decided.

The meeting rose at 1.15 p.m.